

## AGREEMENT FOR PORTAL SERVICES

THIS CONTRACT ("Contract") is made by and between the State of Vermont (the "State") and Vermont Information Consortium, LLC. ("VIC"), a Vermont limited liability company and wholly owned subsidiary of NICUSA, Inc., a Kansas corporation.

### RECITALS:

Whereas, the State desires to improve, expand and enhance its existing eGovernment services for residents and businesses through its existing electronic portal (the "Portal") and to drive adoption through marketing of such services in the most cost-effective, progressive, and cooperative means possible, including operation and maintenance of the Portal (also known as the "Project"); and

Whereas, to further this objective, the State issued its Request For Proposals for Vermont.gov Web Portal (RFP), seeking a private company to develop, operate, maintain, expand and market its e-government services; and

Whereas, NICUSA Inc. ("NICUSA") submitted a proposal dated June 9, 2006 (hereinafter the "NICUSA proposal"), in response to the State's RFP; and

Whereas, the NICUSA proposal was determined by the State to be most appropriate to the goals of the State and the needs of the Project as a result of the competitive procurement; and

Whereas, the State agrees to contract with a subsidiary of NICUSA, known as Vermont Information Consortium, LLC ("VIC") located in the state and dedicated primarily to the complete performance of this contract, which is desirable from both a responsiveness and performance standpoint, as expressed and offered in the NICUSA proposal; and

Whereas, the parties desire to enter into a contract for VIC to serve as the Portal services manager ("Portal Manager") for the Project;

NOW THEREFORE, in consideration of the mutual promises, terms, and conditions of this Contract, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **PURPOSE OF THIS CONTRACT.** The purpose of this Contract is to establish the basis for Portal Manager services between the State and VIC, and for subsequent agreements relating to the Portal between the parties hereto and other State governmental entities, boards, commissions, departments, agencies, authorities, counties, cities, towns, townships, school corporations, political subdivisions, local governments, community Portals, political subdivisions, and other similar State or local governmental and quasi-governmental entities (hereinafter collectively referred to as "data-providing entities" or "DPEs") as portal resources permit.
2. **PURPOSE OF PORTAL.** The purpose of the Portal may be summarized as follows:
  - 2.1. To create and provide a significant and diligently promoted public service to State residents and businesses as resources permit, by:
    - 2.1.1. Increasing the accessibility to information and services made available for enhanced access or through electronic means by DPEs; and

- 2.1.2. Promoting economic development by increasing the ease of access to government data and other useful information and by promoting the sharing of that information; and
  - 2.1.3. Promoting government efficiency and citizen convenience through electronic government transactions.
  - 2.2. Providing such public service without increasing the tax burden on the residents or businesses of the State, through utilization of private capital and management and appropriate payment of management fees and Portal expenses for the same from revenues generated through Portal operations.
- 3. LIMITATION OF PURPOSE. For the purposes of this Contract, VIC shall primarily engage in the business of electronic governmental services in the State.
- 4. TERM OF CONTRACT.
  - 4.1. This Contract shall be for a term of three (3) years, commencing October 15, 2006, and expiring at 12:00 A.M., October 14, 2009, unless earlier terminated pursuant to the provisions herein regarding termination.
  - 4.2. This Contract may be renewed, or amended and renewed, for one (1) additional three (3) year period upon notice to VIC not less than twelve (12) months prior to the expiration date of this Contract or any renewal period, or as otherwise agreed by the parties in writing.
  - 4.3. "Term" as used in this Contract shall mean the initial term together with any renewal periods(s) that are approved as provided above.
- 5. RELATIONSHIP OF PARTIES.
  - 5.1. Except as otherwise expressly provided herein, the parties hereto, in the performance of this Contract, will be acting in an independent capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Except as expressly agreed, no party will assume any liability for any injury (including death) to any persons, or any damage to any property arising out of the acts or omissions of the agents, employees, or subcontractors of any other party.
  - 5.2. VIC understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the contract. VIC understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including, but not limited to income, withholding, sales and use, and rooms and meals, must be filed by VIC, and information as to contract income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes. VIC is solely liable for all labor and expenses in furtherance of its performance hereunder.

- 5.3. The Vermont Web Portal Board shall, within sixty (60) days from the execution of this Contract (and from time to time thereafter, upon request, as soon as practicable but in any event within thirty (30) days from receipt of such request), provide VIC with any specific delegation of administrative and other functions under this Contract to an individual who will serve as the State Single Point of Contact for routine portal matters hereunder ("SSPC"). The SSPC shall be responsible for the duties assigned in this contract relating generally to oversight of the fees and policies of the Project as outsourced to VIC. In every instance the SSPC shall act in the role of Project oversight for the State.

## 6. HARDWARE, SOFTWARE AND ACCESS.

- 6.1. VIC will provide hardware, and provide or develop software as enumerated and described in the NICUSA Proposal, as modified by the Portal Plan (as defined and described in Paragraph 9.8 below), and such other hardware and software necessary to maintain the Portal as operational in accord with this Contract and all other agreements between either VIC and the State or any DPE.
- 6.2. [Reserved by the parties]
- 6.3. The CIO's Office reserves the right to act as purchasing agent for VIC for any hardware and/or software, according to VIC's specification, if the CIO's Office can procure these items through its contracts at a lesser cost than VIC and within VIC's proposed timeframe.
- 6.4. In accordance with this Contract, upon termination (except termination by the State without cause pursuant to Paragraph 24.2 below or termination by VIC for cause pursuant to Paragraph 24.3 below) or expiration of this Contract, VIC shall deliver, transfer, and grant to the State, without additional charge and free and clear of any known third party liens, restrictions or encumbrances, a complete copy of all application and Portal software, documentation and source code related thereto and utilized in operating the Portal, that were originally developed by VIC or one of its affiliated subsidiaries of NICUSA, (collectively hereinafter "NICUSA Portal Software"), but not software or documentation created by third parties and purchased by VIC (hereinafter "Third Party Software"), together with any software updates or upgrades made by VIC or one of its affiliated subsidiaries of NICUSA to NICUSA Portal Software while VIC was developing or operating the Portal (all such NICUSA Portal software, documentation, source code, object code, and updates, but excluding Third Party Software, are hereinafter collectively referred to as the "Software"), under a license, of the standard type in use by NICUSA at the time of grant, to use the Software only in connection with operation of the State Portal, in perpetuity, with rights to modify the source code and to create derivative works therefrom which shall be subject to the same License. License rights to Third Party Software used to operate the Portal shall be transferred to the State by VIC to the extent permissible under the applicable license terms. Software that is Third Party Software and which is not transferable to the State shall be identified and described by VIC on a list attached as an Exhibit to this Contract or from time to time on a quarterly basis.

- 6.5. The Software shall be delivered to the State as required under Paragraph 6.4 under such license no later than the last date that the parties operate under the Contract or as otherwise agreed to mutually by the parties.
- 6.6. After the transfer of the Software under license as identified in Paragraph 6.4, the State shall have the right to make additional modifications, upgrades, and enhancements to the Software, or to purchase or otherwise acquire such modifications, upgrades, and enhancements, as the State may see fit for the purposes of maintaining and operating the State Portal.
- 6.7. VIC will be responsible during the Term of this Contract for keeping, maintaining, and preserving all Portal hardware and software and records. Items of hardware or software loaned to any entity by VIC will be maintained as agreed between VIC and the affected entity.
- 6.8. VIC shall deposit on a quarterly basis a copy of the source code for the most recent version of all NICUSA Portal Software pertaining to Vermont (excluding Third Party Software) (collectively known as the "Source Code"), in escrow with a neutral third party to be mutually chosen by VIC and the State under the terms of an escrow agreement satisfactory to the State, VIC and the escrow agent. During the Term of this Contract, VIC will have the authority to remove superseded Source Code. The copy of the Source Code shall be delivered to the State by the Escrow Agent in the event (i) VIC is declared bankrupt or is the subject of any liquidation or insolvency proceeding which is not dismissed within ninety (90) days; or (ii) VIC is required to deliver Source Code as provided in Paragraph 6.4 above; or (iii) as otherwise provided in the agreement with the Escrow Agent.
  - 6.8.1. VIC acknowledges that it will deliver a copy of the software escrow agreement between VIC and its Escrow Agent to the State. VIC shall obtain the consent of the State in writing to any amendments to such agreement, any change in Escrow Agent, or of any replacement or successor escrow arrangements.
  - 6.8.2. The cost of the Source Code escrow shall be borne by VIC, and paid out of the Portal's revenues as an operating expense. The State agrees that the copy of the Source Code shall be treated as the Confidential Information of VIC notwithstanding termination or expiration of this Contract.
7. CONNECTIONS BETWEEN PORTAL AND STATE AGENCIES. Costs associated with, and maintenance of communication links from State facilities to VIC facilities for Portal purposes, shall be paid as expenses from the Portal revenue account. Communication links from State facilities to VIC facilities shall be procured from the State's preferred providers except as otherwise agreed by the State.
8. COVENANT AGAINST LIENS OR ENCUMBRANCES. VIC will not pledge or encumber any assets of the State in its care, custody or control, or cause or permit any lien to attach to same.
9. PORTAL SERVICE AND SLA AGREEMENTS.
  - 9.1. VIC on behalf of the State and as directed by the State, shall use its reasonable best efforts to negotiate with DPEs (data-providing entities as defined in Paragraph 1) and to obtain their approval through written sub-servicing agreements (hereinafter, "SLA

Agreements”) to implement electronic access for the public and electronic transactions with DPEs. The State shall use its reasonable best efforts to encourage cooperation by DPEs with the Portal, and shall be signatories to the SLA Agreements.

- 9.2. The parties shall cooperate in the preparation, within thirty (30) days from execution of this Contract, of the form of the SLA Agreement to be used by VIC. The terms of this Contract, and the documents and exhibits incorporated herein by reference, are intended to be incorporated into any SLA Agreement, and the parties shall use best efforts to cause such incorporation. In the event of a conflict between this Contract and any SLA Agreement, the terms of this Contract are intended to be controlling, unless the State grants an express written waiver allowing the SLA Agreement to deviate from this Contract.
- 9.3. All terms and conditions of implementing electronic access through the Portal for DPEs shall be set forth in such SLA Agreements, entered into by and among the DPE, the State and VIC.
- 9.4. Each SLA Agreement shall address the following issues, as necessary and appropriate in each case:
  - 9.4.1. Procedures for the handling of any Statutory Fees (as defined below) which the DPE may charge, including whether or not the such fees will be collected by the Portal Manager (as an agent or otherwise), utilized to pay Portal expenses, paid pursuant to Paragraph 9.5 below from a Portal Revenue Account (including the time period/cycle and means by which DPEs will be paid from the Portal Revenue Account, if applicable) and any other terms or conditions relating to said Statutory Fees,
  - 9.4.2. The establishment of any Enhanced Access Fees (as defined below) that will be implemented by the State Portal for information access or transaction convenience consistent with the terms of this Contract, (including the time period and means by which the State or the DPEs will be paid from the Portal Revenue Account for access, if applicable) and any other terms or conditions relating to said Enhanced Access Fees.
    - 9.4.2.1. "Statutory Fees" are those fees, taxes and assessments established by statute, ordinance, resolution, or other law or regulation (excluding Enhanced Access Fees), charged by the State to obtain a copy of a record, obtain a license or permit, or otherwise to engage in a transaction with a DPE.
    - 9.4.2.2. "Enhanced Access Fees" include convenience, electronic access, or electronic delivery charges associated with electronic delivery of a record, or electronic filing of a transaction which are established in connection with the State Portal or otherwise specifically identified in a SLA Agreement as an Enhanced Access Fee. It is contemplated that Enhanced Access Fees will be those fees that the State has specifically approved from time to time for the Portal Manager (as a State contractor) to charge to third parties for State Portal usage.
    - 9.4.2.3. "Total Fees" equal, for any particular electronic record delivery or electronic transaction filing, Statutory Fees (if any) plus Enhanced Access Fees.

- 9.4.3. The criteria which the DPE and VIC will utilize for system development, testing and acceptance in order to assure the reliability of the Portal,
- 9.4.4. The procedures and means for protection of data and Portal security,
- 9.4.5. A project work plan,
- 9.4.6. A schedule of important dates of events,
- 9.4.7. Specific confidentiality and privacy requirements,
- 9.4.8. The type and content of management and financial reports to be delivered,
- 9.4.9. Training, if any is required,
- 9.4.10. A marketing plan,
- 9.4.11. Portal performance criteria,
- 9.4.12. The DPE's rights of termination,
- 9.4.13. Deadlines for DPE actions,
- 9.4.14. Any other reasonable special requirement to successfully implement and operate electronic access to the DPE's data.
- 9.5. If SLA Agreements provide for the payment of any Statutory Fees through the State Portal, all such fees shall be deposited into a Portal Revenue Account (as defined in, and in accordance with, Paragraph 21 below) maintained by the Portal Manager; and the balances in the Portal Revenue Accounts shall be maintained at all times in an amount equal to or greater than the aggregate amount of Statutory Fees received by VIC less any such fees paid to the State or the DPEs. It is the intention of the parties that where such Statutory Fees are paid by credit card or pursuant to a billing arrangement approved by the State, the Portal Manager shall pay and deliver (to the DPE or State as applicable) all such Statutory Fees due to the DPE or State within sixty (60) calendar days from the usage or sale date unless a shorter period is specified by the State law or regulation. Further, it is the intention of the parties that where such Statutory Fees are paid by automated clearing house ("ACH") transaction, direct deposit or other electronic delivery of funds, the Portal Manager shall pay and deliver (to the DPE or State as applicable) all such Statutory Fees due to the DPE or State not later than within the next following thirty (30) day payment period or cycle (established by the SLA Agreement) immediately after actual receipt of said fees by the Portal Manager (and in any event, within sixty (60) calendar days from the usage or sale date). The State shall have the right to receive statements on the Portal Revenue Accounts, and to audit the Portal Revenue Accounts, at any reasonable time it deems necessary or desirable, to assure that the Portal Manager is properly handling Statutory Fees (whether it is acting as the State's agent or not) in accordance with this Contract and the SLA Agreement.
- 9.6. As a condition to every SLA Agreement, VIC shall present the proposed SLA Agreement and a recommendation for any Enhanced Access Fees to the SSPC for review. The Board shall adopt a fee approval criteria and procedure, and the Joint Fiscal Committee

shall delegate to the SSPC the final authority to act between meetings of the Board. The approval shall occur as soon as practicable, but no later than sixty (60) days from submission. The DPE shall be responsible for obtaining any and all other State approvals as may be required under State law to enter into the SLA Agreement following the SSPC's approval.

- 9.7. VIC shall execute contracts with Portal users desiring monthly accounts or subscription (where appropriate) access to records and transactions, provided however that any special provisions for the payment of Statutory or Enhanced Access Fees are consistent with State laws and regulations and approved by the State. The State shall approve the basic form for such contracts.
- 9.8. PORTAL BUSINESS PLAN.
  - 9.8.1. VIC will provide a Portal Business Plan (the "Plan") to the SSPC within ninety (90) days of execution of this Contract for implementation and transition activities for the basic Portal services including a detailed work plan and schedule of activities and deliverables that establish the baseline schedule for completing the Portal infrastructure, and VIC's estimated and proposed activities regarding the Project for the first twelve (12) months of operation. It is agreed by the parties that such Plan is a good faith estimate with respect to the Project and not a guarantee of performance within the proposed schedule, and further, is subject to such modifications or amendments as the parties may from time to time agree.
  - 9.8.2. VIC will deliver a proposed updated Portal Business Plan (schedule and deliverables) annually indicating changes (if any) to the Plan. The updated Plan will be submitted to the Vermont Web Portal Board for review and approval. Any changes to the approved updated plan and/or deliverables must be approved by the Vermont Web Portal Board and the SSPC.
  - 9.8.3. In no event will VIC be responsible for delays in the Plan due to delays beyond the control of VIC, including, by way of example and not limitation, delays by third party providers and/or in reaching SLA Agreements with State agencies that could include changes in the services provided and/or the order in which the deliverables are performed.
  - 9.8.4. VIC's performance will be measured against the Plan and subsequent modifications of the Plan.
  - 9.8.5. Project status will be reported to the SSPC each month. VIC will closely monitor the schedule and report any anticipated delays to the SSPC in its monthly management report to the SSPC.

## 10. ESTABLISHMENT OF ACCESS FEES.

- 10.1. All Enhanced Access Fees, as defined below, and any other added fees, shall be approved by the Vermont Web Portal Board as constituted in compliance with Act of the General Assembly 2005-2006 No. 203. An Act Relating to the Vermont Web Portal. <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT203.HTM>. VIC

will provide supporting documentation for proposed fees and appear before the board and as needed before the joint committee to support that documentation.

10.2. In considering approval of Enhanced Access Fees to the State, the Vermont Web Portal Board and the Joint Fiscal Committee shall consider the following factors:

10.2.1. The entrepreneurial and start-up nature of the Project and attendant risk of capital for VIC and the need to earn an acceptable rate of return.

10.2.2. The need to invest in the reasonable expansion of and improvement in Portal and information services.

10.2.3. The need of VIC to earn a reasonable profit on Portal operations, considering in particular any investments or monies advanced by VIC in connection with State Portal development, expansion, and maintenance.

10.2.4. The Vermont Web Portal Board and the Joint Fiscal Committee may also consider any additional factors, such as the following:

10.2.4.1. A commitment to the public policy requirement to provide electronic access to public records and electronic transactions at the most reasonable rate possible.

10.2.4.2. That the rates to be charged may be adjusted to permit funding of special projects and enhancement of public service.

10.2.4.3. Any other reasonable factor that in their opinion should be considered.

10.3. Any other charges for Portal services (other than Enhanced Access Fees) will be subject to review and adjustment by the Vermont Web Portal Board and Joint Fiscal Committee with agreement with by VIC. VIC shall make recommendations for amended fees to the Vermont Web Portal Board and the Joint Fiscal Committee as deemed necessary or desirable.

10.4. Enhanced Access Fees may be reduced at the discretion of VIC on an interim basis not to exceed ninety (90) days, as an inducement to increase usage of the Portal, but any such policy is subject to review by the SSPC. In no event, however, shall VIC be entitled to reduce any underlying Statutory Fee that users must pay by law.

10.5. In the event the Statutory Fees are reduced or increased as result of revisions to State law or regulation, such reductions or increases shall be passed on directly to Portal users as a decrease or increase in Total Fees.

## 11. PORTAL MANAGER REVENUE AND REMUNERATION.

11.1. The following provisions shall apply to the recognition and disbursement of all funds received by VIC as a result of the operation of this Contract, unless otherwise mutually agreed to by the parties hereto in writing:



- 11.1.1. Once the revenue stream(s) from transactions under this Contract become operational, VIC shall initially receive Statutory and Enhanced Access Fees charged for electronic access to records and for transactions through the Portal's State Portal.
  - 11.1.2. VIC shall pay the State or DPEs, as applicable, all Statutory Fees as provided in the respective SLA Agreements or otherwise received by VIC.
  - 11.1.3. VIC shall own all Enhanced Access Fees and shall pay all Portal operating and administrative expenses for the State Portal from the same.
  - 11.1.4. VIC will be entitled to retain any sums remaining after payment of the amounts in Paragraphs 11.1.1 through 11.1.3 above as its fee for services provided.
12. DISASTER RECOVERY. VIC will establish and maintain a written disaster recovery plan (hereafter, "DRP") acceptable to the State and will deliver to the SSPC an initial copy of the DRP within ninety (90) days of the execution of this Contract. VIC will provide the SSPC with copies of all substantial modifications to its DRP as they occur.
13. CHANGES IN PORTAL. VIC may not make a planned material change in Portal operations without the prior written consent of the SSPC. A "planned material change" includes, but is not limited to, a change that materially increases the time required to respond to inquiries, or which materially either adds to the complexity of system use, diminishes services provided to users, or results in a comparable impact on operations noticeable by users, and which is contemplated in advance. VIC will provide to the SSPC at least thirty (30) days' prior written notice of a planned material change in Portal operations.
14. NOTICES.
  - 14.1. The SSPC is hereby designated by the State as the person to receive legal notices hereunder on behalf of the State at the record address for such individual, with a copy to the State's Chief Information Officer.
  - 14.2. The President of VIC is hereby designated by VIC as the person to receive legal notices hereunder on behalf of VIC at the record address for the VIC office located in the State, with a copy to the General Counsel of NIC Inc. at the address for the NIC Corporate Offices in Olathe, Kansas.
  - 14.3. Each party may change its designation for notice following written notice to the other parties.
  - 14.4. Notices by the parties to one another shall be given in writing to the persons identified above or to such other persons as may be subsequently identified in a written notice. Such notices shall be effective on the date of mailing or transmission if sent by U.S. first-class or restricted delivery mail, postpaid, certified mail, return receipt requested or by any reputable overnight delivery service, prepaid, or by facsimile transmission or electronic mail if proof of transmission is retained.
15. CONFIDENTIALITY OF INFORMATION; BOOKS AND RECORDS. The parties hereto acknowledge that the State and the SSPC (and most State related DPEs) are subject to the State public records access laws, (the "Public Records Act"), which provides generally that records relating to a public agency's business are open to public inspection and copying unless exempted under the Public Records Act. Subject to the

foregoing, the State and the SSPC will use their reasonable best efforts to treat information relating to Portal operations and received from VIC as confidential and comply with the provisions of this Paragraph 15 where (A) VIC specifically advises the State that it desires such information be kept confidential and (B) such information falls within an exemption under the State's public record laws. The State will not be deemed to be in violation of the Contract if it discloses or makes available to the public any information regarding the State Portal as and to the extent such disclosure is required pursuant to or under the Public Records Act, *provided however* that it provides to VIC as much advance notice as is reasonably possible of its intention to comply with any such request, so that VIC may have an opportunity to challenge the provision of such documents if it chooses to do so.

- 15.1. For purposes of this Paragraph 15, a "trade secret" is defined as information which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertained by proper means by, other persons who can obtain economic value from its disclosure or use.
- 15.2. For purposes of this Paragraph 15, "confidential or proprietary information" shall consist of the following:
  - 15.2.1. All books, records, documents, and electronic files that pertain to VIC's business or operation or to that of its corporate parent, affiliate, or subsidiary (as contrasted to VIC's operation of the Portal) unless the same are disclosed publicly by VIC or its corporate parent, affiliate or subsidiary. Such materials are the property of VIC or its corporate parent, affiliate or subsidiary and are not Portal records.
  - 15.2.2. All Portal customer and user information that contains separately identifiable financial and subscriber information are property of VIC as business records and are not Portal records.
  - 15.2.3. Any and all records maintained by the State or any DPE which are not deemed "public" under State public record laws by virtue of falling into one of the exceptions to the definition of public record in state law.
- 15.3. When VIC furnishes or discloses written information produced or generated by VIC, deemed by VIC to be confidential, proprietary or trade secret and such information is furnished or disclosed in a tangible form, it shall clearly mark the information in a manner to indicate that it is considered proprietary, confidential, trade secret or otherwise subject to limited distribution as provided herein. To the fullest extent consistent with and permitted by State public record laws, the State acknowledges that such information constitutes trade secrets and commercial and financial information of VIC which is not a public record and is not subject to public access under State law.
- 15.4. When VIC furnishes or discloses information of VIC deemed to be confidential, proprietary, or trade secret in a verbal or intangible form, it shall, at the time of disclosure, clearly identify the information as being proprietary, confidential or a trade secret, or otherwise subject to limited distribution as provided herein.
- 15.5. Subject to the requirements of State public record laws, the State agrees not to disclose or produce for any purpose, including in response to a subpoena or other court or governmental order, without giving VIC or its successors, assigns, parents, or subsidiaries as much advance written notice and an opportunity to object to the

disclosure or production of any of the confidential, proprietary, or trade secret information of VIC or its corporate parent, affiliates, and subsidiaries (collectively referred to herein as the "VIC Confidential Information") as is reasonably possible. At the request of the State, VIC shall provide such reasonable assistance as may be requested by the State to comply with this provision.

- 15.6. All other State governmental agencies, bureaus, departments, or units shall be subject to the same requirement of confidentiality, if VIC Confidential Information, marked as confidential, is disclosed to such entity, whether by VIC or by another entity of the State or by anyone else.
- 15.7. Notwithstanding anything to the contrary herein, the State may disclose in response to specific requests records pertaining to the operation of the Portal that do not contain VIC Confidential Information or separately identifiable Portal customer or user information.
- 15.8. VIC acknowledges that all confidential information described in 15.2 above, for which access is made available to VIC by the State or by any DPE, is and remains the confidential property and records of the State. VIC agrees that it (i) will not disclose such Confidential Information of the State to any person or entity unless necessary or appropriate to further the objectives of this Contract or otherwise required by law or court order, and (ii) will not distribute, sell or make any use whatsoever of any Confidential Information other than for the purposes expressly described in this Contract. If VIC makes available or discloses any such State owned Confidential Information to its corporate parent, affiliates, subsidiaries or any State-approved third-party subcontractor in order to further the objectives of this Contract, it shall (A) give as much reasonable prior notice to the State of its intention as is reasonably possible, and (B) require such party to agree in writing to the confidentiality requirements of this Contract, if reasonably possible.
- 15.9. VIC shall keep accurate books, records and documents related to the operation of the Portal and shall make such books and records reasonably available to the State, its auditors or its agents for inspection and review at any reasonable time during the term of the contract and for three years thereafter. Such accessibility and disclosure will not, by itself, cause any such records that constitute VIC Confidential Information to lose their protected status hereunder.
- 15.10. In the event of transition of Portal manager operations from VIC to another Portal manager, VIC shall deliver such records as are necessary for Portal operations to the new Portal manager. Any such transfer and disclosure will not, by itself, cause any such records that constitute VIC Confidential Information to lose their protected status hereunder. In the event of any such transition, the VIC Confidential Information shall not be disclosed or produced for any purpose, including a subpoena or other court or governmental order, without giving VIC or its successors, assigns, parents, or subsidiaries as much advance written notice and an opportunity to object to the disclosure or production as is reasonably possible. VIC shall be entitled to retain copies of the same.
- 15.11. Within thirty (30) days after termination or expiration of this Contract, without renewal, VIC shall deliver all non-confidential Portal records to the State, and such records shall

become the exclusive property of the State, if not already so owned by the State.

- 15.12. VIC shall be entitled to retain copies of all Portal records for its own archival and defense purposes.

16. STATE PORTAL PRIVACY POLICY. VIC shall propose, and recommend to the SSPC for adoption, a State specific Portal Privacy Policy for posting on the Portal regarding information submitted to or retrieved from the government through the Portal, or if one already exists, any recommendations it has for amending the same. Such recommendation shall be made within four months of the signing of this Contract.

17. FINANCIAL REPORTING AND AUDITS.

- 17.1. VIC will provide to the State monthly income statements, cash flow statements and other reports reasonably requested by the State for the Portal and the Project.
- 17.2. VIC will also disclose as Confidential Information, quarterly financial statements (unaudited, but presented in accordance with Generally Accepted Accounting Practices ("GAAP") and annual financial statements of VIC (covering revenues of the Project), for the sole purpose of demonstrating that VIC has maintained positive net worth and such additional capital and liquidity as may be reasonably adequate for the operation of the Project. In addition, VIC will provide the State with a summary of any operating controls or security audit findings that affect VIC on the same confidential basis. A competent and reputable CPA firm licensed in the State and approved by the State CPA licensing authority, or a recognized national CPA firm, will perform any such audit.
- 17.3. VIC also agrees to make changes requested by the State to comply with recommendations made in any audit, which changes are reasonably agreed to by both the State and VIC.
- 17.4. To the extent the audit report discloses any discrepancies in the VIC's charges, billings or financial records, and following a period for review and verification of the amount by VIC and the State, VIC will adjust the next regular payment to the State as soon as reasonably possible, but not to exceed ninety (90) calendar days. VIC shall cooperate to assure that verification is completed in a timely manner.
- 17.5. The accounting system shall include a numbered chart of accounts, books of original entry of all transactions, appropriate subsidiary ledgers, a general ledger that includes to-date postings and an audit trail through financial statements. Such books may either be maintained on paper or on computer with appropriate backup. VIC shall from the beginning of this Contract maintain the calendar year ending December 31, for reporting purposes.

18. CONSISTENCY WITH OTHER DOCUMENTS. VIC shall conduct all Portal operations and development generally in accordance with the terms of this Contract and the NICUSA Proposal, as modified by any approved Portal business plan, and in particular in compliance with applicable SLA Agreements and incorporated project plans. As deemed necessary or desirable, VIC may depart from such Proposal or DPE project plan regarding non-material issues; however, before making any material departure, VIC must obtain the approval of the State and the affected DPEs in advance. VIC shall timely provide to the State the Portal management, financial and operational reports that the State may reasonably request or as is provided for in

any SLA Agreement to implement the electronic access. The principal means for these reports shall be the Portal monthly management report to the SSPC.

#### 19. OVERSIGHT OF THE PORTAL.

19.1. The Vermont Web Portal Board shall have oversight of the Portal. Oversight shall include, but not be limited to:

19.1.1. Establishing Portal Enhanced Access Fees and any other Portal charges upon recommendation from VIC and the DPEs, subject to approval by the State's Chief Information Officer or his or her designee.

19.1.2. Establishing Portal policy with input from VIC.

#### 20. FULL-TIME EQUIVALENT POSITIONS AND SALARIES, BENEFITS AND RELATED EMPLOYER EXPENSES.

20.1. VIC agrees to attain a staffing level during the first fiscal year as set out in the Plan and the applicable SLA Agreements, contingent upon Portal resources.

20.2. VIC shall be solely and exclusively responsible for the hiring, firing, recruitment, management, and training of its employees. The State shall have no involvement in the personnel affairs of VIC beyond the disclosure of the names and positions of officers and employees of VIC. VIC agrees to undertake employee background checks and other procedures reasonably requested by the State, and to obtain a signed certificate of compliance with Paragraph 34 below. The State shall have the right at any time to require that VIC remove from interaction with the State, any VIC personnel engaged in the Project who the State reasonably believes are detrimental to its working relationship with VIC on the Project. The State shall provide VIC with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, VIC shall immediately remove such individual from the Project until it makes its determination as to the validity of the risk; however, VIC shall not place the person on the Project again without the State's consent.

20.3. VIC shall only pay compensation to any of its officers or employees from revenues generated by the Project for services performed for VIC on behalf of the Portal,

20.4. VIC shall be solely responsible for all costs related to the employment of its officers and employees, including but not limited to, workers' compensation premiums and deductible obligations, unemployment compensation tax withholding contributions, tax withholding contributions, and other taxes, charges, and assessments.

20.5. VIC's nominee for initial State Portal General Manager is Mr. J. Casey Faiman, who is hereby approved by the State. The State shall have the right to approve any successor to Mr. Faiman as Portal General Manager, and to approve any removal by VIC of any person from that position, if such person has held such position for less than twenty four (24) calendar months, unless and except if such removal is for negative performance reasons. The State acknowledges that VIC cannot compel Mr. Faiman or any other individual to remain employed by it or any VIC affiliate involuntarily.

## 21. BANK ACCOUNT FOR REVENUE AND PAYMENTS THEREFROM.

- 21.1. GENERAL PROVISIONS. VIC shall establish and maintain one or more accounts in federally insured banks or thrifts having one or more offices in The State, for deposit of all revenue from Portal operations (“Portal Revenue Account(s)”) and shall furnish the SSPC with the names of the institutions, the account numbers and the names of those persons having signatory authority therefore the same. Any funds deemed by VIC to be “idle” or “excess” funds (defined as those funds not required to meet immediate needs) may be deposited or invested by VIC at its discretion in such money market accounts, treasury bills, or other suitable investment vehicles as may be permitted under the State’s Investment Guidelines and which provide for the safety and preservation of principal, until such funds are needed. The interest (if any) derived therefrom shall be re-invested in Portal operations.
- 21.2. PAYMENTS FROM ACCOUNTS. The funds in the Portal Revenue Accounts may be disbursed for only the following purposes:
  - 21.2.1. To pay the State or DPEs as provided in this Contract or the SLA Agreements.
  - 21.2.2. To pay the ordinary, necessary and reasonable expenses for the operation, maintenance, or expansion of the Portal, including marketing.
  - 21.2.3. To pay the reasonable costs of system development, including programming (to the extent not covered by regular salary under ordinary operating expenses), and purchases of software or hardware.
  - 21.2.4. To pay VIC as provided in Paragraph 11 herein.
- 21.3. AUDIT OF PORTAL REVENUE ACCOUNTS. In addition to the annual audits provided for previously in this Contract, books and records of the Portal Revenue Accounts, accounts receivable, and proceeds therefrom (whether or not disbursed by the Portal), that are generated from Portal operations conducted by VIC, shall be made available to the State for it to audit, inspect and copy during reasonable business hours and upon reasonable prior notice to VIC, should the state desire to do so.

## 22. DOCUMENTS INCORPORATED BY REFERENCE.

- 22.1. The NICUSA Proposal, the General State of Vermont Requirements (as adapted by the State for the Portal project and set forth in Paragraph 22.3 below), the Standard State Contract Provisions (as adapted by the State for the Portal project and set forth in Paragraph 22.3 below) are incorporated into this Contract by reference and made a part hereof.
- 22.2. In the event of any conflict between the terms of the General State of Vermont Requirements (as modified in Paragraph 22.3 below), the Standard State Contract Provisions (as modified in Paragraph 22.3 below) or NICUSA Proposal and the provisions of this Contract, the terms of this Contract shall control. It is the intention of the parties that any disputes be resolved pursuant to Paragraph 45 below.

- 22.3. The following paragraphs of the General State of Vermont Requirements are inapplicable to this Contract: 4.1, 4.4, 4.5.2. The following paragraphs of the Standard State Contract Provisions are inapplicable to this Contract: 10, 12. The following paragraphs of the General State of Vermont Requirements are modified or superseded by the provision in this Contract: 4.5, 4.5.3. The following paragraphs of the Standard State Contract Provisions are modified or superseded by provisions in this Contract: 3, 5, 6, 8, 9. All remaining paragraphs are incorporated by reference without modification.

## 23. INSURANCE AND BONDS.

- 23.1. VIC shall provide the State written evidence of the following:
- 23.1.1. That VIC is a Vermont limited liability company in good standing with the State.
- 23.1.2. That VIC is covered by a general comprehensive liability insurance policy in the amount of at least (i) \$1,000,000 bodily injury, \$1,000,000 annual aggregate and property damage coverage of \$300,000; \$300,000 annual aggregate; (ii) automobile liability insurance, combined single limit \$1,000,000 each occurrence bodily injury and property damage. The State shall be listed as an additional insured.
- 23.1.3. That VIC is covered by an Employee Dishonesty/Crime Insurance Policy covering all VIC officers and employees in the State in an amount of at least \$100,000 per occurrence. The State shall receive a certificate indicating that such policy covers funds in the hands of VIC but belonging to the State.
- 23.2. VIC shall maintain all workers' compensation insurance coverage as required by law.

## 24. TERMINATION OF THIS CONTRACT.

- 24.1. TERMINATION BY THE STATE FOR CAUSE. The State shall have the right to terminate this Contract for cause, subject to cure, by providing written notice of termination to VIC. Such notice shall specify the time, the specific provision of this Contract or "for cause" reason that gives rise to the termination, and, if susceptible to cure, shall specify reasonable appropriate action that can be taken by VIC to avoid termination of the Contract. The State shall provide a specified period of time of up to sixty (60) calendar days, unless otherwise specified in this Contract, for VIC to cure breaches and deficiencies of its performance obligations under this Contract.
- 24.1.1. For purposes of Paragraph 24.1, the phrase "for cause" shall mean:
- 24.1.1.1. Any material breach or evasion by VIC of the terms or conditions of this Contract and its amendments, if any.
- 24.1.1.2. Substantial cessation or material degradation of Portal services by VIC, or material failure of VIC to meet the performance standards set out in the Plan.
- 24.1.1.3. The commission of fraud, misappropriation, embezzlement, malfeasance, significant misfeasance, or similar illegal conduct pertaining to business matters of the State Portal by VIC, its officers, directors or by any corporation or shareholder owning a controlling interest in VIC.

- 24.1.1.4. Dissolution of VIC or forfeiture of VIC's corporate existence or good standing in the State without assignment to a capable successor within NICUSA.
- 24.1.1.5. Enactment, amendment or repeal of any statute or an adverse judicial decision by a court of competent jurisdiction, not actively sought by the State, which has the effect of rendering Portal operations no longer feasible, and which shall be cause for immediate termination, unless alternate arrangements have been made through legislation or otherwise for legal continuation of the Project or Portal.
- 24.1.1.6. The occurrence of any of the following by or with respect to VIC or any corporation or entity having a controlling interest in VIC (including, at the time of execution, NICUSA):
  - 24.1.1.6.1. Commencing or permitting a filing against it which is not discharged within ninety (90) days of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against VIC in any involuntary case or other proceeding commenced against VIC seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to VIC or either of their debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against VIC seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to VIC or either of their debts, unless the filing entity has timely elected to reaffirm its obligation under this Contract;
  - 24.1.1.6.2. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official on behalf of VIC or any substantial part of VIC's or VIC's assets;
  - 24.1.1.6.3. Making an assignment for the benefit of creditors;
  - 24.1.1.6.4. Failing, being unable, or admitting in writing the inability generally to pay its debts as they become due or failing to maintain at VIC positive net worth and such additional capital and liquidity as is reasonably adequate for the operation of the Project; or
  - 24.1.1.6.5. Taking any action to authorize any of the foregoing.
- 24.1.1.7. VIC's material breach of an agreement with any DPE which is not timely cured shall be grounds for termination of that DPE agreement.
- 24.1.1.8. An intentional or negligent act or omission by VIC, its parent, affiliates or any agent within the control of VIC resulting in the disclosure of any



Confidential Information of the State that has been clearly indicated as being confidential.

24.2. TERMINATION BY THE STATE WITHOUT CAUSE.

24.2.1. If required by State law, in the event appropriated funds are used for all or a part of the funding of operations of the Portal or the Project, then with respect to that portion of the Portal or Project so funded, where the Director of the State Budget Office makes a written determination that funds are not appropriated or otherwise available to support continuation of this Contract or of a SLA Agreement, the Contract or the SLA Agreement or that portion thereof so funded, shall be immediately cancelled. A determination by the State Budget Director that funds are not appropriated or otherwise available to support continuation of the Contract or SLA Agreement shall be final and conclusive.

24.2.2. LIABILITY UPON TERMINATION WITHOUT CAUSE OR TERMINATION BY VIC FOR CAUSE. Should the State terminate this Contract without cause pursuant to Paragraph 24.2 of this Contract prior to the expiration of the Initial Term, or should VIC terminate for cause pursuant to Paragraph 24.3, the State may elect one of the following options:

24.2.2.1. Contract with VIC for a software license and ongoing support upon mutually agreeable terms and conditions; or

24.2.2.2. Select a new Portal manager, and elect to have VIC support the Portal pursuant to Paragraph 25 of this Contract; or

24.2.2.3. Operate the Portal and purchase the equipment, a perpetual Software license and any transferable interests in the third Party Software licenses, for a one-time payment to VIC equal to VIC's total expenditure plus VIC's fee during the first year of the Contract as established in the Portal Business Plan times the total number of years in the initial term prorated by the number of months that have elapsed under the initial term of the Contract.

24.3. TERMINATION BY VIC FOR CAUSE. VIC shall have the right to terminate this Contract for cause, subject to cure, by providing written notice of termination to the State. Such notice shall specify the time, the specific provision of this Contract or "for cause" reason that gives rise to the termination, and shall specify reasonable appropriate action that can be taken by the State to avoid termination of the Contract. VIC shall provide a specified period of time of up to sixty (60) calendar days, unless otherwise specified in this Contract, for the State to cure breaches and deficiencies of its performance obligations under this Contract. For purposes of Paragraph 24.3, the phrase "for cause" shall mean:

24.3.1. Any material breach or evasion by the State of the terms or conditions of this Contract and its amendments, if any.

24.3.2. The financial base upon which VIC relies for solvent Portal operations and its fee does not materialize within six (6) months of the execution of this Contract or is removed in the future.

## 25. CONTINUITY OF SERVICES.

- 25.1. VIC recognizes that the services under this Contract are very important to the residents and businesses of the State and it is strongly desired that the same be continued without interruption and that, upon contract expiration, a successor, whether a governmental agency or another private entity, may continue them.
  - 25.2. Prior to the end of the Contract Term (the "Transition Period"), VIC covenants to make an orderly transition of the Portal and to perform any and all tasks in good faith that are necessary to preserve the integrity of on-going Portal operations. VIC shall be entitled to receive its ordinary and usual compensation from the continued operation of the Portal during such transition period; provided however, that if at the time of such transition the Portal Project is not generating sufficient funds for solvent operations, then VIC shall not be required to subsidize the continued operations of the Portal or Project during the Transition Period.
  - 25.3. VIC shall make every reasonable effort to ensure that any such Portal transition shall be performed in a professional and businesslike manner, and shall comply with the reasonable requests and requirements of the State, DPEs, and any successor Portal services manager, toward the end that a successful, seamless, and unhindered transfer of responsibilities is accomplished by the end of the Contract Term.
  - 25.4. The parties acknowledge that VIC's affiliate, New England Interactive LLC ("NEI"), another wholly owned subsidiary of NICUSA, has been performing selected services for the State for a fee prior to and during the State's RFP for this Project, which services continue to this point. The State desires that those services be transitioned to VIC and be paid for, and VIC compensated for such services, under the transaction revenue model contemplated in the RFP and NICUSA's proposal; at the same time, the parties acknowledge that it will take some period of time for the transaction revenue stream to begin to generate under this Contract, and that NEI will not continue to perform services until transitioned without being compensated. Accordingly, the State and VIC agree:
    - 25.4.1. NEI shall be permitted to continue to provide such services for the agreed fee until such time as such services transition to VIC under this Contract.
    - 25.4.2. VIC shall work with NEI to cause the transition of such services to be the second priority for the Project, with the establishment of the basic transaction revenue stream under this Contract as first priority.
    - 25.4.3. State commits to VIC to work with VIC, and VIC commits to work with the State, to cause the basic transaction revenue stream under this Contract to be established as expeditiously as possible following Contract signing, including obtaining any necessary SLA agreements under this Contract.
    - 25.4.4. VIC has obtained assurances from NICUSA that NEI will expeditiously transition such services once VIC is able to sustain them under the transaction revenue model.
26. **FORCE MAJEURE.** In the event that any party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of (or if failure to perform the services is caused by) natural disaster, actions or decrees of governmental bodies, or other event or failure not the fault of the affected party

(hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other parties and shall use reasonable efforts to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds sixty (60) calendar days from the receipt of notice of the Force Majeure event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract without incurring any liability, liquidated damages or termination charges whatsoever.

27. STANDARD USE MESSAGES. If necessary or required by law or if requested by the State, VIC shall cause the Portal to display a standard use message upon initial log-on to the Portal, and each Portal user shall be required to verify compliance with said message terms. Upon subsequent log-ons, such message may be displayed only, without verification, if prior verification is logged in the user's file. There shall be a facility for the user to change his or her indication regarding the verification. Messages shall state in understandable and clear terms what, if any restriction(s) exist with regard to accessing the information or conducting the transaction, and that the individual accessing the information or conducting the transaction must accept any and all such restriction(s) before proceeding with the authorized access or transaction. Moreover, in addition to any overall messages, the Portal shall include any language or restriction required by The State or Federal law for information from or transactions with a particular DPE. The standard use message shall be updated to comply with any amendments to applicable law.

#### 28. DPE ACCESS.

- 28.1. Consistent with State policies, all DPEs shall have terminal (read) access to the computerized log of Portal users accessing for-fee data of such DPE and the user's security status, without access cost to the DPE or other DPEs or agencies of the State. The DPE will be responsible for the cost of terminal(s) and the cost of a dial-up or lease line, whichever is used, along with the cost of the ISP.
- 28.2. A DPE must be able to sign on to VIC's system to audit enhanced access to the DPE's for-fee records. On-line audit capability must be available for the length of time specified by the DPE in the SLA after transaction processing. After the on-line retention period has expired, VIC shall, as specified between VIC and the DPE, and subject to this Contract, retain, destroy, or provide the Portal user log information to the DPEs without cost. Insofar as these records may be public, VIC shall act as directed by the DPE in compliance with the State law on retention or access of public records.
- 28.3. At a minimum, the Portal shall retain the following data: name of Portal user, transaction data and time, type of inquiry and access keys.
- 28.4. VIC shall notify affected DPEs and the Chief Information Officer of the State of any successful unauthorized access to Portal operations lying within VIC's control, within two (2) hours of detection of the same. The notice shall contain detailed information to aid the State or any affected DPE in examining the matter.

#### 29. PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INDEMNITY.

- 29.1. VIC shall indemnify, defend and hold harmless the State against any claim that any part of the VIC Software, programming or operation provided by or to be provided by VIC infringes a U.S. patent, or a U.S. or international copyright, trade secret or trademark of any person or entity, and VIC shall be solely responsible for any resulting costs,

damages, and attorney's fees finally awarded, except to the extent such infringement was caused or induced by the State or any of its instrumentalities. .

- 29.2. The State shall be provided with prompt notice of any claim of infringement of a U.S. patent, or a U.S. or international copyright, trade secret or trademark, and VIC shall have the exclusive right to defend or settle such claim at VIC's option except that the State shall have the right to participate in the defense and selection of defense counsel, at its own expense, when issues of State law or policy are involved. The State shall cooperate with VIC in its defense or settlement of such claim at no further expense to the State.
- 29.3. If VIC determines that, as a result of such claim the right of users to use the Portal is likely to be abridged, VIC shall (a) take all reasonable steps necessary to procure for the State the right to continue to use programming or operation; or (b) modify the Portal (provided such modification will accomplish resumption of substantially all Portal operations) so that no such abridgment will occur and correspondingly reduce charges if the modified Portal is not substantially comparable to what it was before the modification. If (a) and (b) fail, then VIC may discontinue such service without liability except where VIC acted with gross negligence, willful misconduct or bad faith with respect to infringement and damages to the State resulted. If resumption of substantially all Portal operations cannot be accomplished, the State may terminate the Contract for cause pursuant to Paragraph 24.1.

### 30. LIABILITY.

- 30.1. The State, its agents and employees shall not be legally responsible to VIC for errors due to Portal problems not within their control.
- 30.2. VIC agrees for itself and its employees and assigns to indemnify, defend and hold harmless the State, its officers and employees from any and all third party claims of loss, damage or liability arising directly from VIC's performance of this Contract and relating to personal injury or damage to personal property that is alleged to have resulted, in whole or in part, from the negligent or intentional misconduct of VIC provided that the claim was not caused or induced by the State or any DPE.
- 30.3. VIC agrees that it has no right of subrogation or contribution from the State for any judgment rendered against VIC or any claim settled by VIC except as and to the extent that the State or its agents, entities or employees are responsible for any loss.
- 30.4. VIC's maximum liability for damages to the State caused by its failure(s) to perform its obligations under this Agreement is limited to proven direct damages for breach of contract claims caused by VIC's negligent or willful misconduct not to exceed \$500,000 in the aggregate over the Term including any renewal term(s). IN NO EVENT SHALL VIC BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHETHER ALLEGED TO BE ATTRIBUTED TO SUCH BREACH OF AGREEMENT, TORT OR NEGLIGENCE OR OTHERWISE CAUSED, EXCEPT I) TO THE EXTENT OF THE INDEMNIFICATION PROVISION HEREIN FOR TORT CLAIMS RESULTING IN BODILY INJURY OR

PROPERTY DAMAGE AND/OR II) FOR DISCLOSURE OR USE OF THE OTHER PARTY'S PROPRIETARY INFORMATION IN BREACH OF SECTION 15. Further, except in the event of disclosure or use of the other party's proprietary information in breach of Section 15, in no event shall either Party be liable to the other for lost profits resulting from alleged breach of this Agreement even if, under applicable law, such lost profits would not be considered consequential, indirect, or special damages

31. ASSIGNMENT AND SUBCONTRACTING.

- 31.1. VIC may not assign any of its rights or delegate any of its duties hereunder unless done pursuant to express and prior written consent of the State.
- 31.2. VIC may subcontract portions of work to be performed by it under this Contract with the express and prior written consent of the State. The State acknowledges and consents to use the subcontracted services of affiliated VIC entities to assist in the performance of VIC's duties hereunder, including longtime VIC subcontractors, provided the fees for such services shall be reasonable and no greater than fees that would be paid to unaffiliated third parties for similar services and further provided that any State-approved subcontractors acknowledge and agree in writing to perform such services consistent with any applicable terms of this Contract, including without limitation those provisions relating to State ownership and confidentiality of State records. Any subcontractors hired by the primary contractor must adhere to the same standards and contract provisions applicable to the primary Contractor.
- 31.3. VIC shall be fully responsible for all performance activities, compliance with this Contract, with user agreements and with all SLA Agreements and compliance with all federal, State and local laws, including, but not limited to, any equal employment opportunity and affirmative action statutes and regulations, if applicable, for all subcontractors, if used. VIC also agrees to include in all subcontract agreements a tax certification in accordance with Paragraph 39 of this Contract.

32. COMPLIANCE WITH LAWS. VIC agrees to comply with all applicable federal, State and local laws, rules, regulations, or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any State or federal statute or the promulgation of regulations thereunder after execution of this Contract shall be reviewed by the State and VIC to determine whether the Contract requires a formal amendment.

33. NONDISCRIMINATION. VIC and its subcontractors, if any, shall comply with the Americans with Disabilities Act, including Section 508 of the Rehabilitation Act, and the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable...Contractor further agrees to include this provision in all subcontracts to be performed within the State of Vermont. Breach of this covenant may be regarded as a material breach of contract.

34. CONFLICT OF INTEREST.

34.1. As used in this Paragraph 34:

34.1.1. "Immediate family" means the spouse and the unemancipated children of an individual.

34.1.2. "Interested party" means:

- 34.1.2.1. The individual natural person executing this Contract;
  - 34.1.2.2. An individual natural person who has an interest of three percent (3%) or more of the equity of VIC or VIC's parent corporation; or
  - 34.1.2.3. Any member of the immediate family of an individual specified under subparagraph 34.1.2.3 or 34.1.2.2.
- 34.2. The State may cancel this Contract without recourse by VIC if any interested party is or becomes an employee of the State.
- 34.3. The State will not exercise its right of cancellation under subparagraph 34.2 above if VIC gives the State an opinion by the State Ethics Commission indicating that the existence of this Contract and the employment by the State of the interested party does not violate any statute or code relating to ethical conduct of State employees. The State may take action, including cancellation of this Contract consistent with an opinion of the State Ethics Commission obtained under this subparagraph 34.3.
- 34.4. VIC has an affirmative obligation under this Contract to disclose to the State when an interested party is or becomes an employee of the State.
- 34.5. VIC shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this contract.
- 34.6. The obligation under this Paragraph 34 extends only to those facts that VIC knows or reasonably could know.

35. COPIES. All written reports prepared under this contract will be printed using both sides of the paper

36. RELIANCE BY THE STATE ON REPRESENTATIONS. Any payments by the State of appropriated funds under this contract will be made in reliance upon the accuracy of all prior representations by VIC, including but not limited to bills, invoices, progress reports and other proofs of work.

37. SET OFF. The State may set off any sums which the Contractor owes the State against any sums due the Contractor as a result of any work done on a time and materials basis under this contract; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

38. ENVIRONMENTALLY PREFERABLE PURCHASING

- 38.1. The State of Vermont is a national leader in the development and application of Environmentally Responsible Purchasing and control of Hazardous Material Use. Environmentally Preferable Purchasing means "products and services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw material acquisition, production, manufacturing, packaging, distribution, re-use, operation, maintenance, or disposal of the product or service" (Presidential Executive Order 13101; US EPA; generally accepted by industry).

- 38.2. The State of Vermont has established specific goals and objectives aimed at: providing sound environmental stewardship, protection of human health, reducing state operating expenses associated with the use and control of regulated hazardous materials, and reduction of potential liability attributable to environmental impact. Therefore, the following environmental criteria shall be considered for all state purchasing and contracts:
- 38.3. Mercury Content: The State of Vermont is committed to minimizing the amount of mercury utilized in its operations, and desires to eliminate the purchase of products that contain mercury whenever feasible alternatives exist at a reasonable cost and comparable performance. Where mercury-free alternative products do not exist, preference will be given to the purchase of products with the lowest (documented) total mercury content feasible and products that bear a mercury content warning label as required of product manufacturers under Vermont law, Executive Order #03-02. The State of Vermont urges suppliers to continue to develop, produce, and bring to market appropriate, cost competitive, and effective mercury-free replacements.
- 38.4. Take Back Provisions: VIC does not have a take-back program.
- 38.5. Energy Efficiency (Energy Star): State of Vermont Agencies and Departments are directed to reduce greenhouse gas emissions from state government buildings and operations (Executive Order # 14-03). To improve our energy performance and help the environment by reducing our energy use, purchases by State agencies shall be made only for reduced energy-consuming devices that meet or exceed the Energy Star or comparable standards established by the U.S. federal government, where possible, without compromising quality or performance. These products use 25 to 50 percent less energy than their traditional counterparts. Reduced energy consumption will result in fewer fossil fuels burned and greenhouse gas emissions reduced, lessening air pollution. Energy efficient products often have an extended product life and decreased maintenance costs, and provide a return on investment due to a reduction in energy costs.
39. SEVERABILITY. Should any provision of this Contract be found invalid, ineffective or unenforceable under present or future law, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
40. TAXES.
- 40.1. The State is exempt from all federal, State, and local taxes. The State will not be responsible for any taxes levied on VIC in performing hereunder. Should sales or other Internet taxes be levied upon the services provided online under this Contract, the sales taxes shall be passed along to the user of the online service automatically by adjusting the Total Fees to be paid.
- 40.2. Taxes Due To The State:
- 40.2.1. VIC understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

- 40.2.2. VIC certifies under the pains and penalties of perjury that, as of the date the contract is signed, VIC is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
  - 40.2.3. VIC understands that final payment of appropriated funds under this contract may be withheld if the Commissioner of Taxes determines that VIC is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
  - 40.2.4. VIC also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if VIC has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and VIC has no further legal recourse to contest the amounts due.
41. NO WAIVER OF BREACH. No waiver of a breach of any provision of this Contract shall constitute a waiver of any other breach, or of such provision. Failure of the State or VIC to enforce at any time, any provision of this Contract shall not be construed as a waiver thereof.
42. NON-COLLUSION AFFIDAVIT. The undersigned attests subject to the penalties for perjury that he or she is the contracting party, or that he or she is the representative, agent, member or officer of the contracting party, that he or she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him, directly or indirectly, to the best of his or her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he or she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of the agreement.
43. PENALTIES/INTEREST/ATTORNEY'S FEES. Each party will in good faith perform its required obligations hereunder and, does not agree to pay any penalties, consequential, incidental or liquidated damages, interest, or attorney's fees, except as required by State law.
44. WARRANTIES.
- 44.1. VIC warrants that VIC will perform Activities 1 through 7 as defined in the RFP in a professional and workmanlike manner and that the product of this performance (the "Portal") consisting of the hardware and DMV application software owned, controlled and hosted by VIC, when used as permitted and in accordance with the instructions and configurations described in the approved design specifications will operate substantially as described in the approved design specifications through the initial Term and any renewal terms.
  - 44.2. Any modifications to the Portal, as may be mutually agreed upon throughout the Term either through a business plan amending this Contract or separate SLA Agreements, will be similarly warranted as to VIC's performance. Any applications that are added to the Portal as a result of such modifications will be warranted against defects or deficiencies in compatibility or operations for a period of 90 days. Such Warranties may extend past the end of the contract. After the warranty period has expired, VIC agrees to perform routine maintenance and break/fix services on any applications at no cost to the State throughout the Term and any renewal terms.



- 44.3. VIC further warrants, represents and assures that it will perform all of its management services to the State for the Project at all times in a diligent, competent and workmanlike manner, in accordance with applicable laws and regulations and in a timely fashion consistent with its reasonable schedules and work plans.
- 44.4. EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY VIC, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.
45. GOVERNING LAW. This Contract shall be construed in accordance with and governed by the laws of the State of Vermont, and suit, if any, must be brought in that State.
46. DISPUTE RESOLUTION.
- 46.1. It is the intent of the parties that any disputes that may arise between them be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' duly authorized representatives. When such resolution is not possible, and depending upon the nature of the dispute, the parties hereto agree to resolve such disputes in accordance with the provisions of this Paragraph 45.
- 46.2. Any disputed issues concerning this Contract shall in all instances be initially referred to the parties' designated representatives identified in Paragraph 14 hereof. The parties' designated representatives shall use reasonable best efforts to render a mutually agreeable resolution of the disputed issue, in writing, within seventy-two (72) hours of such referral.
- 46.3. VIC shall continue to perform pursuant to this Contract during any dispute resolution proceedings, subject to the provisions of this Contract.
47. COUNTERPARTS. This Contract may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
48. ENTIRE AGREEMENT. This written Contract contains the sole and entire Contract between the parties, and supersedes any and all other Contracts between them. The parties acknowledge and agree that none of them has made any representation with respect to the subject matter of this Contract or any representations inducing the execution and delivery hereof except such representations as are specifically set forth herein, and each party acknowledges that it has relied on its own judgment in entering into the Contract. The parties further acknowledge that any statements or representations that may have heretofore been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with her or its dealings with the other.



OFFICE OF THE CHIEF INFORMATION OFFICER:

By: \_\_\_\_\_

Director

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**ACCEPTED AND AGREED:**

The SSPC:

By: \_\_\_\_\_

Chairman/Individual

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_